IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 349 OF 1995

Shri.Khandu Deoji Lohare ]
Aged about 41 years, residing ]
at Room No. 430, Line No.11, ]
Police Head Quarters, Nashik ]..Appellant (Accused)

Versus

The State of Maharashtra ]..Respondents

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Mr.M.S.Mohite with Mr.M.D.Lonkar Advocate for Appellant.
Mr.A.S.Shitole, A.P.P. for the State.

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**CORAM: SMT.V.K.TAHILRAMANI,J.**

**DATE : OCTOBER 16,2004**

**ORAL JUDGMENT:**

1. Through this appeal, the appellant-accused challenges the judgment and order dated 23rd June, 1995, passed by the learned Additional Sessions Judge, Nasik in Sessions Case No.35 of 1994. By the said judgment and order, the appellant has been convicted for the offence under Section 307 of IPC and sentenced to undergo R.I. for three years and to pay a fine of Rs.2000/- indefault to suffer R.I. for six months.

2. Briefly stated the prosecution case is as under:

. Complainant P.W.2 Madhav Deshmukh, P.W.8 Kisan Shewale as well as the accused were residing in line no.10 situated at Police Head Quarters, Nasik. The complainant who is the injured witness as well as P.W.8 Kisan were police constables. The appellant was residing infront of the house of the complainant. The incident had occurred on 18th July, 1993 at about 9.30 p.m. The appellant was abusing the brother of the complainant. The complainant Madhav Deshmukh objected to the same and scuffle ensued between Madhav and the appellant. Thereafter, the appellant stabbed Madhav with knife on the stomach. At that time, P.W.8 Kisan Shewale intervened in the quarrel. Appellant inflicted one blow with the knife in the stomach of Kisan Shewale also. Kisan Shewale went to the hospital. The complainant Madhav went to Sarkarwada Police Station from where he was referred to Civil Hospital Nasik. Complaint of P.W.2 Madhav Deshmukh came to be recorded in the hospital. The said complaint came to be lodged on the very day at 23.15 hours. Both the injured persons came to be examined by Dr.P.W.9 Kawale. Dr.Kawale noticed following injuries on P.W.2 Madhav Deshmukh:

> "(1) stab injury to the left side of the abdomen size 1 cm. x 5 cm. lumber region;
>
> (2) to the left thumb region 4 cm. x 1 cm. muscle deep. Injury was caused by sharp and pointed object.

. Dr. Kawale noticed the following injury on the person of Kisan Shewale:

> "Stab injury left hypochondrium, its size 1.5 cm. x 1.5 cm."

. In respect of both these injured witnesses, Dr.Kawale has stated that the injuries were grievous in nature. The injuries in ordinary course of nature were sufficient to cause the death of the patient. After completion of investigation, the charge sheet came to be filed.

3. In due course the case came to be committed to the Court of Sessions for trial. The charge was framed against the appellant-accused under Section 307 of IPC for causing injuries to Madhav and Kisan and for an offence under Section 135 of the Bombay Police Act. The appellant pleaded not guilty and claimed to be tried. The defence of the appellant-accused is that of total denial.

4. During the trial, in all, the prosecution has examined ten witnesses. P.W.2 Madhav Deshmukh and P.W.8 Kisan Shewale are the injured witnesses. P.W.10 Police Inspector Khedkar is the Investigating Officer in the present case. Most of the other witnesses have turned hostile or their evidence is of no use to the prosecution. Relying on evidence of the injured witnesses, the learned Sessions judge convicted and sentenced the appellant as stated in para no.1 above. Hence, this appeal.

5. I have heard Mr.M.S.Mohite, the learned advocate for the appellant and Mr.A.S.Shitole, the learned A.P.P. for the State. In my view, the learned Additional Sessions Judge has rightly convicted the appellant under Section 307 of IPC.

6. The prosecution case mainly rests on the evidence of the complainant and injured witness P.W.2 Madhav Deshmukh and P.W.8 Kisan Shewale who is also an injured witness. I first propose to deal with the evidence of complainant and injured witness P.W.2 Madhav Deshmukh.

. Madhav Deshmukh has stated that accused was residing infront of his room. The incident occurred on 18th July, 1993 at about 9.30 p.m. The appellant

was abusing his brother Rajaram. At that time, Madhav asked him as to why he was abusing his brother. Thereupon, a scuffle ensued between the two. During the scuffle, appellant stabbed Madhav with the knife in his stomach. P.W.8 Kisan Shewale intervened in the quarrel. The appellant also stabbed Kisan Shewale. Thereafter, Madhav went to Sarkarwada Police Station from there, he was referred to Civil Hospital Nasik for medical treatment and in the civil hospital, complaint (Exhibit-50) came to be recorded. Nothing has been brought out in the cross examination of this witness so as to disbelieve his testimony in respect of the assault by the appellant on him as well as P.W.8 Kisan Shewale.

7. On behalf of appellant, it has been submitted that the incident occurred at 9.30 p.m. and it has come on record through the evidence of P.W.2 Madhav that there was no electricity supply that evening and throughout the night. The street lights were also off and it was ‘New Moon Day’. However, it is pertinent to note that the incident as per P.W.2 Madhav, was going on for about 10 to 12 minutes. The injured witnesses and the appellant were known to one another. The appellant was residing just infront of the house of P.W.2 Madhav. Line no.11

was opposite to line no.10 and there is no material to show that the lights in line no.11 were off. In any event, the accused and the injured witnesses were very close to one another, the incident took place for about 10-12 minutes, the witnesses and the accused were well known to each another and in such case, it cannot be said that injured witnesses had no opportunity to identify the assailant.

8. The other injured witness is P.W.8 Kisan Shewale. His evidence is on similar lines as that of P.W.2 Madhav Deshmukh. Kisan Shewale has clearly stated that appellant dealt a blow with sharp edged weapon in the stomach of Madhav. Thereafter, the appellant inflicted a blow with that weapon in the stomach of Kisan. Nothing has been elicited in the cross examination of this witness so as to disbelieve his testimony. Shri.Mohite, the learned advocate appearing for the appellant has pointed out that the evidence of this witness cannot be relied upon because his statement came to be recorded only on 28th July, 1993 i.e. about ten days after the incident. However, this fact by itself would not lead one to disbelieve the testimony of this witness. It cannot be said that this witness has falsely implicated the appellant or as an after thought. This is because F.I.R. in the present

case was lodged by P.W.2 Madhav within two hours of the incident and in the F.I.R. it is clearly stated that the appellant had assaulted Madhav and Kisan with sharp edged weapon. Thus, merely because the statement of Kisan was recorded on 28th July, 1993, it could not be a ground to disbelieve his statement. I find the evidence of both the witnesses to be truthful, consistent and reliable. It is no doubt true that both these witnesses do not identify the knife article-14, however that fact is again not such as to discard their testimony on the point of assault on them by sharp edged weapon by the appellant. Their evidence is corroborated by the medical evidence.

9. P.W.8 Dr.Kawale has stated about the injuries to both these witnesses. These injuries are referred to in para no.2 of this judgment. Dr.Kawale has stated that in both these cases, injury was caused by sharp and pointed object. The injury was grievous in nature. The injury in ordinary course of nature was sufficient to cause the death of the patient. Thus, in the present case, there is enough evidence to show that the appellant had caused injuries with a sharp edged weapon to P.W.2 Madhav and P.W.8 Kisan. Thus, in my view, the learned Judge has rightly convicted the appellant for the

offence under Section 307 of IPC.

10. At this stage, Mr.Mohite, the learned advocate for the appellant has submitted that the incident had occurred more than ten years ago, the family members of the appellant are dependent upon him, prior to this incident, there was no adverse record against the appellant so also there is no material to show that after the incident, there is any adverse record of even a minor offence against the appellant and on account of the incident, the appellant also lost his job. Shri.Mohite has further submitted that the appellant has been sufficiently punished and hence, sentence imposed on the appellant may be reduced to the period already undergone by him.

11. Looking to the fact that more than ten years have elapsed since the incident and that the appellant is not a hardened criminal, and this was the only incident he was involved in, neither prior to the incident nor thereafter, there is any adverse record against the appellant, I am inclined to reduce the sentence of imprisonment to the period already undergone by the appellant. However, I am inclined to increase the fine amount from Rs.2,000/- to Rs.6,000/-. Sentence in default of payment of

fine, remains the same as imposed by the learned Sessions Judge.

12. In view of the above, the judgment and order of conviction for the offence under Section 307 of IPC dated 23rd June, 1995, passed by the learned Sessions Judge in Sessions Case No. 35 of 1994 is confirmed. However, the sentence of imprisonment is reduced to the period already undergone by the appellant. The appellant is sentenced to pay additional fine of Rs.4,000/- i.e. total fine amount of Rs.6,000/-. In default of payment of fine, the appellant is directed to suffer R.I. for six months. It is stated on behalf of the appellant that fine amount of Rs.2,000/- as imposed by the learned Sessions Judge, has been deposited in the trial Court. On the request of the learned advocate for the appellant, five weeks time is granted to pay the remaining fine amount from today.

. Appeal is partly allowed in the above terms.

[V.K.TAHILRAMANI.J]

FARAD CONTINUATION SHEET
IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
**CRIMINAL APPEAL NO.349 OF 1995**
( Shri.Khandu Deoji Lohare Vs. The State of Maharashtra)

| Office Notes, office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders | Court's or Judge's orders |
|---|---|

Mr.M.S.Mohite with Mr.M.D.Lonkar
Advocate for Appellant
Shri.A.S.Shitole, A.P.P. for State

CORAM: SMT.V.K.TAHILRAMANI,J.
DATE : OCT. 16, 2004

. For the reasons mentioned separately in the judgment, the following order is passed:

. The judgment and order of conviction for the offence under Section 307 of IPC dated 23rd June, 1995, passed by the learned Sessions Judge in Sessions Case No. 35 of 1994 is confirmed. However, the sentence of imprisonment is reduced to the period already undergone by the appellant. The appellant is sentenced to pay additional fine of Rs.4,000/- i.e. total fine amount of Rs.6,000/-. In default of payment of fine, the appellant is directed to suffer R.I. for six months. It is stated on behalf of the appellant that fine amount of Rs.2,000/- as imposed by the learned Sessions Judge, has been deposited in the trial Court. On the request of the learned advocate for the appellant, five weeks time is granted to pay the remaining fine amount from today.

. Appeal is partly allowed in the above terms.

(V.K.TAHILRAMANI,J.)